



# Special Educational Needs and Disability Act 2001

## 2001 CHAPTER 10

### PART 2

#### DISABILITY DISCRIMINATION IN EDUCATION

### CHAPTER 3

#### MISCELLANEOUS

#### **35 Extension of role of Disability Rights Commission**

Schedule 7 extends the role of the Disability Rights Commission in relation to discrimination made unlawful by Chapters 1 and 2 of Part 4 of the 1995 Act.

#### **36 Codes of practice**

(1) Section 53A of the 1995 Act (codes of practice) is amended as follows.

(2) For subsection (1) substitute—

“(1) The Disability Rights Commission may prepare and issue codes of practice giving practical guidance on how to avoid discrimination, or on any other matter relating to the operation of any provision of Part 2, 3 or 4, to—

- (a) employers;
- (b) service providers;
- (c) bodies which are responsible bodies for the purposes of Chapter 1 or 2 of Part 4; or
- (d) other persons to whom the provisions of Parts 2 or 3 or Chapter 2 of Part 4 apply.

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- (1A) The Commission may also prepare and issue codes of practice giving practical guidance to any persons on any other matter with a view to—
- (a) promoting the equalisation of opportunities for disabled persons and persons who have had a disability; or
  - (b) encouraging good practice in the way such persons are treated, in any field of activity regulated by any provision of Part 2, 3 or 4.
- (1B) Neither subsection (1) nor (1A) applies in relation to any duty imposed by or under sections 28D or 28E.”
- (3) In subsection (8), omit the words after first “proceedings”.
- (4) After subsection (8), insert—
- “(8A) But if a provision of a code of practice appears to a court, tribunal or other body hearing any proceedings under Part 2, 3 or 4 to be relevant, it must take that provision into account.”
- (5) In subsection (9), in the definition of “discrimination”, for “or Part III” substitute “, 3 or 4”.

### **37 Conciliation for disputes under Part 4 of the 1995 Act**

In the 1995 Act, insert the following section—

#### **“CHAPTER 3**

#### SUPPLEMENTARY

#### **31B Conciliation for disputes**

- (1) The Disability Rights Commission may make arrangements with any other person for the provision of conciliation services by, or by persons appointed by, that person in connection with disputes.
- (2) In deciding what arrangements (if any) to make, the Commission must have regard to the desirability of securing, so far as reasonably practicable, that conciliation services are available for all disputes which the parties may wish to refer to conciliation.
- (3) No member or employee of the Commission may provide conciliation services in connection with disputes.
- (4) The Commission must ensure that arrangements under this section include appropriate safeguards to prevent the disclosure to members or employees of the Commission of information obtained by any person in connection with the provision of conciliation services in accordance with the arrangements.
- (5) Subsection (4) does not apply to information which is disclosed with the consent of the parties to the dispute to which it relates.
- (6) Subsection (4) does not apply to information which—
  - (a) does not identify a particular dispute or a particular person; and

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(b) is reasonably required by the Commission for the purpose of monitoring the operation of the arrangements concerned.

- (7) Anything communicated to a person providing conciliation services in accordance with arrangements under this section is not admissible in evidence in any proceedings except with the consent of the person who communicated it.
- (8) “Conciliation services” means advice and assistance provided to the parties to a dispute, by a conciliator, with a view to promoting its settlement otherwise than through a court, tribunal or other body.
- (9) “Dispute” means a dispute arising under Chapter 1 or 2 concerning an allegation of discrimination.
- (10) “Discrimination” means anything which is made unlawful discrimination by a provision of Chapter 1 or 2.”

### **38 Relationship with other Parts of the 1995 Act**

- (1) The 1995 Act is amended as follows.
- (2) In section 2 (past disabilities)—
- (a) in subsection (1), for “and III” substitute “to 4” and
  - (b) in subsection (4), for “or Part III” substitute “, 3 or 4”.
- (3) In subsection (3) of section 3 (courts etc. to have regard to guidance), for “A tribunal or court” substitute “An adjudicating body”.
- (4) After that subsection, insert—
- “(3A) “Adjudicating body” means—
- (a) a court;
  - (b) a tribunal; and
  - (c) any other person who, or body which, may decide a claim under Part 4.”
- (5) In section 19 (meaning of “discrimination” in Part 3) omit—
- (a) paragraphs (a) to (ab) of subsection (5); and
  - (b) subsection (6).
- (6) In that section, insert after subsection (5)—
- “(5A) Nothing in this Part applies to the provision of a service in relation to which discrimination is made unlawful by section 28A, 28F or 28R.”
- (7) In section 55 (victimisation), in subsection (1), for “or Part III” substitute “, Part 3 or Part 4”.
- (8) In that section, after subsection (3), insert—
- “(3A) For the purposes of Chapter 1 of Part 4—
- (a) references in subsection (2) to B include references to—
    - (i) a person who is, for the purposes of that Chapter, B’s parent; and
    - (ii) a sibling of B; and

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- (b) references in that subsection to this Act are, as respects a person mentioned in sub-paragraph (i) or (ii) of paragraph (a), restricted to that Chapter.”
- (9) In subsection (1) of section 57 (aiding unlawful acts), for “act made unlawful by this Act” substitute “unlawful act”.
- (10) After subsection (5) of that section, insert—
- “(6) “Unlawful act” means an act made unlawful by any provision of this Act other than a provision contained in Chapter 1 of Part 4.”
- (11) In paragraph 2 of Schedule 2 (past disabilities) for “and III” substitute “to 4”.
- (12) After that paragraph, insert—
- “2A       References in Chapter 1 of Part 4 to a disabled pupil are to be read as references to a pupil who has had a disability.
- 2B       References in Chapter 2 of Part 4 to a disabled student are to be read as references to a student who has had a disability.”
- (13) After paragraph 4 of that Schedule, insert—
- “4A       In section 28B(3)(a) and (4), after “disabled” insert “or that he had had a disability”.
- 4B       In section 28C(1), in paragraphs (a) and (b), after “not disabled” insert “and who have not had a disability”.
- 4C       In section 28S(3)(a) and (4), after “disabled” insert “or that he had had a disability”.
- 4D       In subsection (1) of section 28T, after “not disabled” insert “and who have not had a disability”.
- 4E       In that subsection as substituted by paragraphs 2 and 6 of Schedule 4C, after “not disabled” insert “and who have not had a disability”.”
- (14) Omit paragraph 129 of Schedule 37 to the 1996 Act (amendment of section 19(5) of the 1995 Act).
- (15) Omit section 38 of the Teaching and Higher Education Act 1998 (c. 30) (amendment of section 19(6) of the 1995 Act).
- (16) Omit paragraph 49 of Schedule 9 to the Learning and Skills Act 2000 (c. 21) (amendment of section 19(5) of the 1995 Act).

### **39       Application to the Isles of Scilly**

In the 1995 Act, insert the following section—

#### **“31C Application to Isles of Scilly**

This Part applies to the Isles of Scilly—

- (a) as if the Isles were a separate non-metropolitan county (and the Council of the Isles of Scilly were a county council), and

- (b) with such other modifications as may be specified in an order made by the Secretary of State.”

#### **40 Duty of Teacher Training Agency**

- (1) In the 1995 Act, omit section 29 (education of disabled persons).
- (2) In section 1 of the Education Act 1994 (c. 30) (establishment of the Teacher Training Agency) add, at the end—
  - “(4) In exercising their functions, the Teacher Training Agency shall have regard to the requirements of persons who are disabled persons for the purposes of the Disability Discrimination Act 1995.”